IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No.2920 of 2006

Shri G.S. Rathore
working as senior safety officer
/elect. /HQ/Sec Railway
Bilaspur (CG) and presently
posted under GM/SEC Railway
Bilaspur, Chattisgarh, and residing
at 15 SMIG, Parijat Extension Colony
Nehru Ngar, Bilaspur (CG) ..... Petitioner

vs

1. The Union of India
   through the Secretary
   Railway Board, Ministry of Railways
   Rail Bhawan, New Delhi
2. The General Manager
   Western Railway Churchgate
   Mumbai 400020 .... Respondents

Mr D.V. Gangal for the petitioner
Mr Suresh Kumar for respondents

CORAM: SWATANTER KUMAR,C.J.,&
S.C.DHARMADHIKARI, J.

JUDGMENT RESERVED ON 17.4.2007
JUDGMENT DELIVERED ON 21.6.2007

JUDGMENT(Per Swatanter Kumar,C.J.):

Rule. Respondents waive service. By consent Rule made returnable forthwith. Heard both sides.

1. Within the circumscribed limitation of law, The Administrative Tribunals Act, 1985, hereinafter referred to as "the Act", is a self contained Code and the administrative tribunal constituted thereunder is to prescribe its procedure

under the provisions of the Act. What is the ambit and scope of the procedure and powers of the tribunal, as contemplated under section 22 of the Act, is simple but a pertinent question of law arises for consideration of the Court in the present case. Section 22 of the Act reads as under:

> "22. Procedure and powers of Tribunal: (1) A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908(5 of 1908) but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central ; Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private.
>
> (2).....
>
> (3) A Tribunal shall have, for the purposes of (discharging its functions under this Act), the same powers as are vested in a civil court under the Code of Civil Procedure, 1908(5 of 1908) while trying a suit, in respect of the following matters, namely:-
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> a).....
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> b)requiring the discovery and production of documents.
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> c) .....
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> d).....
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> e).....
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> f).....
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> g).....
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> h).....
>
> i)....."

2. The expression “requiring the discovery and production of documents” would deem to include powers to ascertain in interrogatories. The very foundation of the contention raised before us, is that the order of the tribunal dated 14th August 2006, by which the application for discovery by interrogatories was dismissed, suffers from error of jurisdiction. The main emphasis is that the tribunal has failed to exercise its jurisdiction, which is lawfully vested in it, within the ambit and scope of the above provisions.

3. The relevant facts are that the petitioner appeared at the common Engineering Service Examination conducted by the UPSC on 23rd July 1987. He had completed the probation and confirmed as Group A office in the Western Railways. He was transferred on various occasions. According to the petitioner, some false, fabricated and mala fide remarks were recorded in the confidential record with the prime object of denying promotion to him. The petitioner first filed Original Application No. 411 of 1992 before the Central Administrative Tribunal (CAT), Jabalpur Bench, for quashing and expunging the confidential remarks recorded for the year ending 31st March 1991, which was allowed vide order dated 12th January, 1993. Then again, the petitioner filed another Original

Application No.203 of 1997, which was disposed of with a direction that the case of the petitioner be considered for promotion. Thereafter the petitioner filed yet another Original Application No.486 of 2001 wherein he had prayed for setting aside and quashing of the punishment order dated 26th July 1997 and the chargesheet dated 10th January 1995. On the basis of these pending proceedings, the petitioner was denied promotion as on 9th June 2005. During the pendency of this petition, the petitioner on 14th February 2006 filed misc. petition in O.A.No. 575 of 2001 (Exhibit I to the petition) for certain interrogatories and requiring the respondents to answer them. The respondents claimed privilege. The tribunal vide its order dated 14th August 2006 directed that the question of privilege would be considered with the main application. However, the request of the petitioner for answering the interrogatories was rejected. The tribunal in its said order held as under:

> "CENTRAL ADMINISTRATIVE TRIBUNAL
> BOMBAY BENCH BOMBAY
> i) M.P. No. 214/2006 in O.S. No.402/2003
> ii) M.P. No. 209/2006 in O.S. No.403/2003
> iii) M.P. No. 210/2006 in O.S. No.404/2003
> iv) M.P. No. 211/2006 in O.S. No.407/2003
> v) M.P. No. 212/2006 in O.S. No.408/2003
>
> Dated this Monday the 14th August 2006

Coram: Hon`ble Dr.D.C. Srivastava, Vice Chairman (A)
Hon'ble Shri Muzaffar Husain, Member (J)

Shri G.S. Rathore-. Petitioner in all the 5 M.Ps
(By Advocate Shri D.V. Gangal)

vs

Union of India and others .. Respondents
(by advocate Shri S. Ravi)

Tribunal's Order

In the present M.Ps the applicant is seeking direction for respondents to answer the interrogatories detailed in schedule of the M.Ps.

2. The respondents have filed replies opposing the M.Ps stating inter alia that the present M.Ps have been filed as an attempt to abuse the process of law. A mere perusal of the contents of interrogatories itself proves that the questions are beyond comprehension of common sense and beyond logical sense and is in the nature of allegations in the guise of questions. Further, a mere perusal of the questions in the schedule ill reveal that the applicant is making allegations of facts which is not the subject matter of the present O.As.

3. We have heard Shri D. V Gangal appearing on behalf of the applicant and Shri S.Ravi appearing on behalf of the respondents. Learned counsel for the applicant submitted that the interrogatories are very much relevant for adjudicating ;the matter in controversy involved in the present case. It will advance the cause of justice. He further argued that the scope of section 22(3) of the A.T. Act is larger than C.P.C. so far as the principles of natural justice is concerned. The tribunal is required to follow principles of natural justice if there is no specific provisions under the Act. The tribunal is well within the power to issue directions to administer the interrogatories.

4. According to section 22(1), the tribunal established under Administrative Tribunals Act, 1985 is not bound by the procedure laid down in CPC. The section empowers to adopt such a procedure which is expedient in the interest of justice but in doing so the tribunal shall be guided by principles of natural justice. The tribunal has power to regulate its procedure subject to the other provisions of this Act.

5. Order XI of CPC deals with two types of discoveries -(i) Discovery by interrogatories and (ii) Discovery by documents. Section 22 (3) only empowers discovery and production of documents though CPC deals with both types of Discoveries viz Discovery by interrogatories (Order 11, rule 1 to 11) and Discovery by interrogatories (Order 11, rule 12 to 14). Section 22(3) of the Administrative Tribunals Act does not empower tribunals constituted under the Administrative Tribunals Act to direct interrogatories to be answered by opposite party as given to Civil Courts under CPC. If the legislature intended the same provision might have been incorporated under section 22(3). In the absence of any specific provision the power to direct any party to answer interrogatories cannot be inferred by necessary implication. A plain reading of section 22(1) makes it amply clear that the tribunals established under the Administrative Tribunals Act is not bound by the procedure laid down in CPC. It empowers the tribunal to adopt such procedure as it deems fit in the interest of justice but in doing so tribunal shall be guided b principles of natural justice. However, these powers are subject to the other provisions of the Act. The argument of the learned counsel for the applicant that direction to answer interrogatories can be issued by following principles of natural justice is misconceived inasmuch as power to issue direction in the absence of any provision under section 22(3) of the Administrative Tribunals Act on the ground of following principles of natural justice.

> 6. There is a consistent decision of this Bench in the case of J.P.Shoke vs Union of India and ors while disposing of M.P. 609/2005 in O.A No.34/2005 wherein the tribunal held that it has no power to direct respondents to answer interrogatories as there is .no provision under the Administrative Tribunals Act for the same. This view was further reiterated in the case of Vinayak Purushotam Gowande vs Union of India and ors while disposing of M.P No.238/2006 in O A No.748/2004 and Mallinath Ramchandra Mhamane vs Union of India and ors in M.P. No.239/2006 in O.A.No. 481/2004. These decisions of the co-ordinate Bench are directly on the point in issue and therefore we are bound to follow these directions.
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> 7. In the result, all the five M.Ps have no merit. Accordingly M.P. No. 214/2006 in O.S. No.402/2003, M.P. No. 209/2006 in O.S. No.403/2003, M.P. No. 210/2006 in O.S. No.404/2003, M.P. No. 211/2006 in O.S. No.407/2003, and M.P. No. 212/2006 in O.S. No.408/2003 are dismissed with no order as to costs."

The legality and correctness of the above order of the tribunal is questioned by the petitioner in the present petition.

4. The learned counsel appearing for the petitioner relied upon the judgment of this court in the case of *Sonia Senroy* vs *Amit Senroy*, AIR 1998 Bombay 302, *Ramlalsao* v. *Tansingh Lalsingh*, AIR 1952 Nagpur 135 and a judgment of the Supreme Court in Raj Narain vs. Smt Indira Nehru Gandhi and anr, AIR 1972 SC 1302 in support of his contention that the provisions of the Code of Civil Procedure would have a binding nature before

the administrative tribunal and the administrative tribunal ought to have allowed the request for serving the interrogatories upon the respondents, at that stage of the case itself and, therefore the order is erroneous and deserves to be set aside.

5. The Central Administrative Tribunal, while referring to the provisions of section 22(3) and Order XI of the of C.P.C. and while following its own orders passed in different cases, as referred to above (supra), recorded a finding that the tribunal had no power to direct the respondents to answer the interrogatories, as there was no specific provision in the Act. Along with the misc. petition praying for serving the schedule of interrogatories to be answered by the respondents, the petitioner had also enclosed the schedule containing as many as 20 questions. These questions related to certain facts and intended to discover certain legal evidence by requiring the respondents to answer them. For example, the questions were asked with regard to the specifications of quantitative and qualitative or financial targets provided for the year ending 1993. The questions were also directed towards finding out what was the evidence for recording of certain reports.

6. Chapter IV of the Act deals with the matters relating to procedure and powers of the Administrative Tribunal. Section 22 of the Act opens with the negative language, stating that the tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908. It is to be guided by the principles of natural justice and, furthermore, the tribunal is vested with the power to regulate its own procedure in relation to the various aspects. In other words, it is not the Legislative intent that the provisions of the Code should be applicable stricto senso. The paramount precept of administrative procedure before the tribunal is the principle of natural justice, added by the own prescribed procedure of the tribunal. (Of course, further to add to the same provision of section 22(3) of the Act, to what extent the tribunal shall be vested with the power of the civil court).

The application of the provisions of the Code would, therefore, be limited and restricted to the extent specified specifically in the provisions of section 22(3) of the Act. The object of the Legislation is clear that it intended to exclude, by using specific language, application of the Code per-se and made restricted provisions applicable to the tribunal and to give liberal construction to this provision, would neither be fair nor

permissible. In fact, it may amount to defeating the very object and purpose of the substantive provisions of section 22 and the scheme of the Act. The very purpose of constitution of the tribunal was for expeditious disposal of matters or disputes or complaints arising in respect of recruitment and conditions of services of persons appointed to the public service and posts. The tribunal, therefore, would exercise powers of civil court only limited by the requirements of clause (a) to (i) of sub-section (3) of section 22 of the Act. With some emphasis, the contention of the learned counsel for the petitioner was that section 22(3)(b) of the Act empowers the tribunal to require discovery and production of documents and this by necessary implications, would include power to serve interrogatories.

7. The expressions “discovery” and “production” have to be read and construed together and they cannot be read disjunct from each other, as both these expressions have a reference to the documents in terms of the language of the provisions. The argument that the 'discovery' has to be construed to include discovery by interrogatories, as contemplated under Order XI of the Code and construction would relate to production of documents only, is an argument misconceived in law. The provisions of Order XI relate to 'discovery by interrogatories'. It

falls within the realm of evidence and is not dependent i.e. where the plaintiff or defendant, by leave of the court, may deliver interrogatories for examination of other parties. Their purpose is not to require the parties to produce documents, as that would be contrary to the provisions of Order XI, rule 14 and Order XIII of the Code. There is no common communality in law in these two provisions. The purpose of section 22(3)(b) of the Act is to have documents produced before the tribunal wherever the tribunal directs. The power to serve to require the parties to discovery by interrogatories is a specific and special power vested in a civil court and intended to achieve a different and distinct object. This cannot in fact and in law be understood as common to production of documents. Once the language of the provision is clear and unambiguous, then it must be understood on its plain reading. There is hardly any scope for adding words to the language of the provision or enlarge its scope beyond its language. There exists no specific language in the provisions to justify acceptance of the petitioner's contention. We also see no reason to carve out an exception to the maxim of a verbis legis non est recedendum.

8. The Black's Law Dictionary explains the word “discovery” in its general sense, the ascertainment of that which was

previously unknown, the disclosure or coming to light of what was previously hidden; the acquisition of notice or knowledge of given acts or facts; as, in regard to the 'discovery' of fraud affecting the running of the statute of limitations, or the granting of a new trial for newly 'discovered' evidence, while the word 'production' means process or act of production; that which is produced or made. In common law this refers to the production by plaintiff of his sects or suit, i.e. persons prepared to confirm what he had stated in the declaration. Discovery and production of document obliges a party to produce that document or discovery or production of document, which, in the opinion of the tribunal, has a bearing to the controversy in issue. The production of a document is incapable of being inter changed with the discovery by interrogatories. There is not only linguistic but even apparent legal distinction upon these two substantive provisions provided under the CPC. The Civil Procedure Code itself is procedural in law and only intends to achieve ends of justice with expediency. Permission to serve interrogatories and particularly of the kind, which have been proposed by the petitioner, would in no way fall within the ambit and scope of section 22(3)(b) of the Act. It can safely be concluded that the directive discovery by serving interrogatories would fall beyond the jurisdiction of the tribunal and the order rejecting such a

request of the petitioner certainly does not suffer from the defect of jurisdictional error. In fact the argument raised on behalf of the petitioner if on the correct interpretation of these provisions would be extra judicium.

9. "Interrogatories" are particular questions in writing, demanded of witnesses or parties brought in to be examined in a case. “Discovery" means the act of revealing or disclosing any matter by a defendant in his answer to a suit filed against him in a court of law. To administer to the ends of justice, the Court, in many cases, compel a discovery (See Law Lexicon by P.Ramanatha Aiyer)

10. The word "interrogatories" has a definite connotation and meaning in law. Discovery by Production of Documents and discovery by Interrogatories are conceptually, different and distinct. It may be that the common purpose in inserting these procedural provisions is expeditious Disposal of a suit or proceeding. However, when they are distinct in concept and meaning, then, it is not possible to hold that conferment of the discretionary power to seek discovery by production of documents would include by implication a power to administer interrogatories. This being the position, it is not possible to uphold the submission of the learned Counsel appearing for the petitioner.

11. Reliance is placed by the Counsel appearing for the petitioner on the judgment of a learned single Judge of Allahabad High Court reported in 1976 Allahabad Law Journal page 156 (Sohan Singh Vs. Maiku Lal Gupta and others).

12. The learned Counsel urges that the Court was considering an identical provision and held that even if the power conferred upon the District /Prescribed Authority in that case was restricted to "discovery and production of documents" the to administer interrogatories/discovery by interrogatories was inherent in the same.

13. Perusal of the decision would reveal that the same is rendered in the backdrop of the object and purpose which was sought to be achieved by inserting section 34(1)(d) in U.P.Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. With respect, in para 6 the learned Judge clearly holds that Order XI of the Code of Civil Procedure deals with two types of discoveries; one discovery by interrogatories and the other discovery by documents. Still, he concludes that the power to

administer interrogatories is implicit in the provisions under consideration before him.

14. The provisions contained in section 22(1) and (2) the Administrative Tribunal Act, 1985 are not pari materia to the U.P.Act. Secondly, the learned Judge's attention does not seem to have been invited to the Supreme Decision reported in (1975) 2 Supreme Court Cases 447 (Dr.Rajendra Kumari Bajpai Vs.Ram Adhar Yadav and others). The Supreme Court was considering the issue of applicability of Code of Civil Procedure to trial Election Petitions. Although, Sec.87 of the R.P.Act, is widely worded the Supreme Court held that applicability of Code of Civil Procedure to the proceedings would depend upon the intention of the Legislature. This is what is observed in para 13 by the Hon'ble Shri Justice S.Murtaza Fazal Ali speaking for the Bench of Five learned Judges in the said decision: -

> "13. We are unable to agree with Counsel for the appellant that Order XI does not form part of the trial of suits but is a special procedure. This is repelled by a reference to Order XI of the Code of Civil Procedure itself. It will appear that Order X relates to the procedure for examination of parties by the Court and Order XI is a part of that procedure, because it provides

that where witnesses not able to appear before the Court personally they are examined through interrogatories. In these circumstances, therefore, Order XI is as much a part of the procedure as Order X relating to trial of suits in matters regarding summoning of witnesses, documents etc. In these circumstances it cannot be said that Section 87 of the Act either expressly or impliedly excludes the application of Order XI of the Code of Civil Procedure. In fact we are clearly of opinion that Section 87 of the Act is of the widest amplitude so as to cover the entire procedure mentioned in the Code of Civil Procedure with only two exceptions - (i) where the Act contains express provision for certain matters which are inconsistent with the procedure prescribed by the Code; and (ii) where a particular provision of the Code of Civil Procedure is either expressly or by necessary intendment excluded by the Act. Subject to these two exceptions, Section 87 is very wide in its connotation."

In this view of the matter reliance placed upon the Allahabad High Court's decision is misplaced.

15. In light of the above findings, now we would revert back to refer to the cases relied upon by the learned counsel for the petitioner. Firstly, we may notice that all these cases were squarely covered under the provisions of Civil Procedure Code, as they were suits,election petitions or appeals under the Code. Secondly, the principle of Res ipsa loquitur has no application to the present case either on facts or law. In the case of Sonia Senroy (supra) the court has said that as a general rule the interrogatories are to be allowed. Even there the court had held that answer to such interrogatories will serve either to maintain the case of the party administering them or to destroy the case of the adversary and obviously interrogatories in that case relate to facts in issue. Similarly in the case of Raj Narain (supra) the court held that the question that may be relevant during the cross examination are not necessarily relevant as interrogatories. Normally interrogatories are those relating to "any matters in question" and they should have reasonably close connection with the matters in question. These were the observations of the Supreme Court in an election petition where parties have a right to lead oral and documentary evidence and face complete trial in accordance with law. This judgment, however, can be in itself answer to what we have observed that

this was more in realm of evidence related to the matters rather than discovery or production of documents as contemplated under section 22(3)(b) of the Act. This would clearly show that the judgment relied upon by the petitioner are hardly of any support to the case of the petitioner. No judgment to the contrary was brought to our notice by either side. We may also notice that the impugned order of the tribunal also shows that it had adopted the practice of declining such a request even in other cases. Thus, the tribunal has followed it as a practice to decline the request for discovery by interrogatories and we see no reason to interfere with such practice, more so when the practice adopted by the tribunal is in conformity with law.

16. The learned counsel for the respondents in fact has no objection in allowing the request of the petitioner that the entire confidential record of the petitioner may be looked into by the tribunal while deciding the case on merits. We also see no jurisdictional or other error in the direction of the tribunal that the contention of the respondents in relation to the claim of privilege would be decided along with the main application.

We have no doubt in our mind that the tribunal would keep these observations in mind while deciding the Original Application of the petitioner on merits. The writ petition is

accordingly dismissed with the above observations, leaving the parties to bear their own costs. Rule discharged.

CHIEF JUSTICE

S.C.DHARMADHIKARI,J.